IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 30569 of 2005(L)

AGAINST THE ORDER IN IA.2253/05 IN
OS.473/1994 of PRINCIPAL SUB COURT, PALAKKAD

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PETITIONERS:
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1. **MEERA SAHIB, S/O.MUHAMMED KANNU,**
   35 YEARS, THUNDUVILAKATHU, T.B.JUNCTION,
   NEYYATTINKARA.

2. **BIYATHUKANNU, D/O.PODIPILLAI,**
   63 YEARS, BAZAR MANZIL,
   AMARAVILA, CHENGAL VILLAGE,
   NEYYATTINKARA.

3. **SHAJAHAN, S/O.JAMALUDEEN,**
   31 YEARS, PULIMOOTTIL HOUSE,
   T.B.JUNCTION, NEYYATTINKARA.

4. **B.FATHIMA, D/O.MOHAMMED KANNU HAJIAR,**
   59 YEARS, KALPADI HOUSE, THANGAPATTANAM,
   PAINKULAM VILLAGE, VILAVINKODE TALUK,
   KANYAKUMARI DIST.

5. **LIYAKATTU ALIKHAN, 37 YEARS,**
   NOOR MAHAL, N.C.C.JUNCTION,
   CHETTIVILAKAM VILLAGE,
   THIRUVANANTHAPURAM.

6. **RAHIMATH BEEVI, D/O.IBRAHIM KANNU,**
   AGED 49 YEARS, FARM HOUSE,
   PARASUVAIKAL, NEYYATTINKARA.

...2/-

7. ASGAR, S/O.MOHAMMED HANEEFA,
25 YEARS,FARM HOUSE, PARASUVAIKAL,
NEYYATTINKARA.

8. ANIL, S/O.MOHAMMED HANEEFA,
AGED 25 YEARS,...DO.....

PETITIONERS 1 TO 6 AND 8 REPRESENTED BY THIS POWER OF ATTORNEY HOLDER 7TH PETITIONER ASGAR.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

RESPONDENT:

C.P.SARATHI, S/O.V.CHANDRASEKHARAN,
NO.21, MAIN ROAD,
ZACHARIA COLONY, MADRAS-94.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI
SRI.P.RAMACHANDRAN (PALAKKAD)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.30569/2005 L

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN OS.473/94 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, PALAKKAD.**

EXT.P2: **COPY OF THE I.A.2134/2005 IN O.S.473/94 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, PALAKKAD.**

EXT.P3: **COPY OF THE APPLICATION AS I.A.2253/2005 ON THE FILES OF THE SUBORDINATE JUDGE'S COURT, PALAKKAD.**

EXT.P4: **COPY OF THE OBJECTION FILED TO THE EXHIBIT P3 APPLICATION.**

EXT.P5: **COPY OF THE ORDER DTD. 22/09/2005 IN I.A.2253/2005 IN O.S.473/94.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 30569 of 2005

Dated this the 16th day of August , 2007

JUDGMENT

Ext.P5 order of the learned Subordinate Judge directing the writ petitioners to produce the originals of certain sale documents executed by the 15th defendant in their favour is under challenge.

2. I have heard the submissions of Sri.V.Manu the learned counsel for the petitioners and Sri.S.M.Prem the learned counsel for the respondent. Sri.Manu submitted that execution or otherwise of the documents in question is not a matter in dispute. No relief at all are sought against the petitioners or in respect of the documents sought to be produced in the present suit. It is stated by the plaintiff in paragraph 6 of the plaint that she is not claiming relief of cancellation of those documents since the relief of setting aside the sale deeds in favour of the present petitioners is claimed in O.S. No.553/1991 filed by the defendants 1 to 14 and such relief will enure for the benefit of the plaintiff in the suit(contesting respondent herein) and that she is not claiming any such relief. In answer to an earlier petition filed by the respondent plaintiff for directing the production of the original of the documents, the writ petitioners filed a counter

affidavit stating that they do not have the originals in their custody since those documents have been deposited with some financial institutions in connection with an equitable mortgage. On noticing that counter, Ext.P3 application has been filed. What is stated in the affidavit in support of Ext.P3 is that the case of the petitioners that the the documents have been deposited in connected with the equitable mortgage is highly doubtful. In Ext.P3 prayer is made for disclosure of full whereabouts of the originals of sale deeds registered as document Nos. 2781, 2782, 2783, 2784, 2785, 2786 and 2788 of 1990, SRO Parasala, dated 23.6.90 executed by the 15th defendant.

3. To Ext.P3, a detailed objection (Ext.P4) was filed by the petitioners contending inter alia that production of the documents is not at all relevant or necessary in the nature of the reliefs sought for in the suit. Repelling those contentions, the learned Subordinate Judge had passed impugned order Ext.P5 recording the contention of the petitioner(first respondent) that the mode of disposition by the 15th defendant and his signature etc. are to be verified and that relevant facts have also to be brought in evidence. Sri.S.M.Prem, the learned counsel for the respondent would strenuously submit that the production of the originals of the documents is necessary for the purpose of confronting the 15th defendant who is presently in the

witness box for the purpose of cross examination.

4. I am unable to agree that the production of the originals is necessary for adjudicating any issue which is relevant in the present suit. Concededly in the other suit (suit No.553/1991) the document in question have already been set aside. May be confrontation of the 15th defendant with originals of these documents which contain the original signature of the 15th defendant may be of use to the respondent in some other proceedings in respect of the properties. As far as this suit is concerned, the production of the originals and confrontation of the 15th defendant with admitted signatures in these documents, according to me, is not relevant or necessary for adjudication.

In view of that matter I set aside Ext.P5 and dismiss I.A. 2253/2005. It is made clear that I have not expressed any opinion on the merits of the rival contentions in the suit.

PIUS C. KURIAKOSE,
JUDGE.

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